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In the High Court of Judicature at Madras

Dated:03-01-2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.28 OF 1997

Thiruvengadachari, represented
by his power of Attorney Agent
R.Villalan ..Appellant/ Plaintiff

v

1. Nagarajan
2. Kaliyaperumal ..Respondents/ Defendants

Second appeal filed against the judgment and decree dated 27.8.1996 made in A.S.No.316 of 1995 on the file of the Principal District Court, Nagapattinam, reversing the Judgment and decree dated 31.8.1995 passed in O.S.No.229 of 1994 on the file of the District Munsif's Court, Mannargudi.

For Appellant : Mr.S.K.Rakhunathan
For Respondents : No appearance.

JUDGMENT

This appeal has been preferred by the plaintiff in O.S.No.229 of 1994 on the file of District Munsif Court, Mannargudi, who has won the case before the trial Court but lost it before the first appellate Court in A.S.No.316 of 1995 on the file of Principal District Court, Ngapattinam.

2. The suit is for an order of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property.

3. The facts in brief are as follows:
The plaint schedule properties were conveyed by the defendants to the plaintiff by way of surrender deeds dated 15.6.1990 and 25.6.1990. The suit properties are situated at Vadakaru Vayal Village. Plaintiff is cultivating the suit lands and was paying land tax to the suit properties. Suit has been filed by the plaintiff, through his power of attorney agent. "Kuruvai"crop was

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raised by the plaintiff in the suit property during last year. Hence the plaintiff could not accede to the request made by the defendants to lease out the property again to them. On 27.4.1994 when the plaintiff was indulged in minor work in the suit property, the defendants came there with their henchmen and obstructed the same. With the help of other agriculturists, the plaintiff thwarted the attempt made by the defendants, and were driven out from the suit property. Hence the suit.

4. The defendants , in their written statement have contended as follows: Plaintiff is not in possession of the suit property. Defendants are cultivating the suit property. Defendants have not executed any surrender deed on 15.6.1990. The allegation that from the date of surrender the plaintiff is in possession of the suit property is also not correct. The claim of the plaintiff that after getting a loan from the Co-operative Bank , he had raised "Kuruvai" crop in the plaint schedule property is not correct. Defendants are cultivating the suit lands in the capacity of tenants. Defendants father was also paying lease rent to the plaintiff, who is residing at Srirangam. Plaintiff was demanding arrears of rent from the father of the defendants. Power agent of the plaintiff is making all sorts of illegal methods to get possession of the suit properties from the defendants. During 1990, the defendants have borrowed Rs.11,000/- and created mortgage in respect of the suit lands, for three years. The defendants have signed in an unwritten papers towards receipt for the borrowed amount. The second defendant also signed in a blank document after receiving Rs.8,000/-. This defendant has also borrowed Rs.8,000/- from Mr.Viswanathan of Vadakarai Village and executed a deed of mortgage in respect of the suit properties. Viswanathan has repaid Rs.8,000/- to the power of Attorney holder and Rs.3,000/- to this defendant. In 1994, the defendants gave Rs.19,000/- to the power of Attorney holder of the plaintiff and asked to hand over possession of the suit properties. But the plaintiff refused to hand over possession but told that the said amount of Rs.19,000/- was not paid as a mortgage loan but only towards surrender of the lands. Plaintiff is not in possession of the suit property. Hence, plaint is liable to be dismissed.

5. On the above pleadings the trial Court had framed four issues and on the basis of the available evidence, both oral and documentary , decreed the suit. Aggrieved by the findings of the trial Court, the defendants preferred A.S.NO.316 of 1995 before the District Court, which has allowed the appeal, setting aside the decree and judgment of the trial court. Hence, the present appeal has been preferred by the plaintiff.

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6. The substantial questions of law involved in this appeal are

i) Whether the lower Appellate court erred in its interpretation of Exhibits A1 and A2 which would clearly establish the surrender of the suit property in favour of the appellant?
ii) Is the Court below right in holding that the transaction effected in the name of the Power of Attorney Agent and not in the name of the principal would vitiate the effect of possession of the suit property by the appellant?

7. The Points:

Only on the basis of the documents under Ex A1 and Ex A2 surrender deeds executed by the defendants 1 and 2, the plaintiff has filed the suit . The first appellate Court has given the following reasoning for rejecting Exs A1 and A2. The first reasoning assigned by the appellate Court is that no dates mentioned in Exs A1 and A2. But the appellate Court has stated that in ExA1 below the signature of the executant the date is mentioned as 15.6.1990 and in Ex A2 below the signature of the executant the date is mentioned as 25.6.1990. So the first reasoning of the appellate Court falls to the ground.

8. The second and third reasonings of the appellate Court are that the stamp papers for Exs A1 and A2 were purchased in the name of the power of Attorney agent Villalan of the plaintiff and not in the name of the plaintiff. The first appellate Court has tried to form a mountain out of a mole. The point is whether Ex A1 and Ex A2 were executed by the defendants or whether they are forged documents as contended by the defendants. The defendants have not examined any witness to show that Ex A1 and Ex A2 are forged documents. On the other hand, the signature of defendants 1 and 2 are found in Exs A1 and A2 respectively. Defendants 1 and 2 admit their signature in Exs A1 and A2. But they would say that they sign in Exs A1 and A2 thinking that they are mortgage deeds. P.W.2's evidence will go to show that both Exs A1 and A2 were written only in the presence of defendants 1 and 2. So the second and the third reasonings of the appellate Court also fail.

9. The fourth reasoning of the appellate Court for setting aside Exs A1 and A2 is that the extent mentioned in Exs A1 and A2 exceeds by one acre 12 cents to that of the property scheduled to the plaint. But in Exs A1 and A2 four boundaries have been given. Even if there is any discrepancy in the extent, only the boundary will prevail. So this reasoning will not also hold any

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water.

10. The fifth reasoning of the appellate court is that Thavasiammal was not made as a party to the suit. Thavasiammal is the mother of defendants 1 and 2. Admittedly, she is not the tenant of the suit property(EX A10 proves this). Since no relief has been claimed against Thavasiammal, she is not a necessary party to the suit.

11. The sixth reasoning assigned by the first appellate Authority is that if really, defendants 1 and 2 would have surrendered the possession then there is no necessity to make any attempt to trespass into the suit property. According to the evidence of the plaintiff, defendants 1 and 2 after executing Exs A1 and A2 had made an attempt to raise"kuruvai"crop in the suit lands. So this ground also goes.

12. The seventh reasoning was that in Ex A5- agriculturist's card only Villalan's name finds a place and not the plaintiff. But Villalan is the power of Attorney agent of the plaintiff.

13. The eighth, ninth and tenth reasonings have no bearing to the facts of the case to decide the issues in the case. The plaintiff has based his claim only on the basis of Exs A1 and A2.

14. There is absolutely no evidence to show that Exs A1 and A2 are forged documents. The first appellate court has miserably failed to consider the relevant point to be decided in this case, which made this Court to interfere with the finding of the first appellate Court in A.S.NO.316 of 1995 on the file of District Court, Nagapattinam. Point is answered accordingly.

15. In the result, the appeal is allowed and the decree and Judgment in A.S.No.316 of 1995 on the file of Principal District Court, Nagapattinam is set aside and the decree and Judgment in O.S.No.229 of 1994 on the file of District Munsif's Court, Mannargudi is restored. In the circumstances of the case, the plaintiff is entitled to his cost through out.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Principal District Judge,
   Nagapattinam.

2. The District Munsif ,
   Mannargudi

3. The Section Officer,
VR Section,
High Court, Madras.

1 cc to Mr.S.K. Rakhunathan, Advocate, Sr. 369

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TEJ (CO)
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